IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.685 OF 1991

The State of Maharashtra
(through P.S.O. Gadhinglaj) ...Appellant.

V/s

1. Shankar Ganpati Gaikwad,
age 32 years, Occ: Doctor
r/o. Hitni, Taluka Gadhinglaj,
Dist. Kolhapur.

2. Smt. Janki Shivappa Pujari
age 30 years, Occ: Nurse,
R/o. as above. ...Respondent.

Mr. B.H. Mehta for the appellant.

Mr R.S. Ghadge h/f S.V. Karade for the respondent.

CORAM: V.M. KANADE, J.
DATE : 10th December, 2004

ORAL JUDGMENT

1. Heard the learned APP for the State and the learned counsel appearing on behalf of the respondent.

2. State has filed this appeal challenging the Judgment and Order passed by the Judicial Magistrate, First Class, Gadhinglaj, Kolhapur in Regular Criminal Case No.93 of 1987. By the said Judgment and Order, the learned Magistrate acquitted the accused of the offence punishable under section 498-A read with section 34 of the Indian Penal Code.

3. In support of the prosecution case, proseuction

has examined the complainant P.W.1 - Banutai Gaikwad. In her evidence, she has stated that the accused had developed ilicit relations with the Nurse who was working in the hospital where the accused was employed as a compounder. She has further stated that the accused used to illtreat her and beat her at the instance of the said Nurse and demanded dowry from her parents. She has stated that she has written letter to her brother which is brought on record at Exhibit-23. She has further stated that the accused and the said Nurse has taken away all the articles of daily use from her house. She has stated that she stayed at Hitni for about two months and, at that time, accused used to illtreat her and beat her. In the letter dated 14/9/1987 which is brought on record as Exhibit-23, the complainant has informed her brother that her husband used to harass her and insist that the complainant should bring ornaments. She has further stated in the letter that her husband did not provide any material which is required in the house and he used to threaten her without any reason. Prosecution has further examined P.W. 2 - Raosageb Patil who is the Police Patil of the village and who has deposed that the accused No.1 and the brother of the complainant had come to his house and the brother had informed him that the accused No.1 was not

treating his wife properly. P.W. 3 - Kerba Bapu Patil is the brother of the complainant who has stated that the accused demanded money and gold from him. He has stated that the accused continued his demand of five tolas of gold and cash amount of Rs 10,000/-. P.W. 4 - Pandurang Patil has stated in his evidence that he was a sarpanch and he knew the complainant and the accused and that he had attempted to reconcile the dispute between the husband and wife and that the accused No.1 had asked for 7 to 8 tolas of gold from the complainant as he had opened a dispensary.

4. In order to establish a case under section 498-A, prosecution has to establish that the accused had subjected his wife with cruelty. The word "cruelty" has been explained in the explanation. Thus cruetly in the context of section 498-A can be either any wilful conduct which was likely to drive woman to commit suicide or cause grave injury or danger to her life or harassment of the woman to meet any unlawful demand for any property or valuable security.

5. In the present case, allegation is that there was harassment and demand for valuable security. However, considering the evidence of the complainant, it is difficult to come to the conclusion that the accused

had demanded any property or valuable security. The grievance of the complainant was that the accused was having an ilicit affair with the Nurse and he was staying with her at Hitni. There is a stary statement made in her evidence that the accused had demanded dowry. No particulars have been mentioned in her evidence. Apart from that, even in the letter which she had written to her brother a very vague allegation is made that the ornaments were demanded. Again, no particulars are given in the said letter regarding the demand for ornaments. The evidence of other witnesses cannot be relied upon particularly when the said witnesses are related to the complainant. P.W.3 - Kerba Patil is the brother of the Complainant and P.W. 4 - Pandurang Patil is also one of the closed relatives of the complainant. From the evidence on record, it appears that efforts were being made to reconcile the disputes between the husband and wife. However, the husband continued to have ilicit relations with the Nurse. The defence of the accused is that he was suffering from skin disease and the complainant deserted the accused. The accused has produced a medical certificate issued by the doctor.

6. In my view, no case is made out by the prosecution that the accused had demanded dowry from the

complainant. In the absence of any particular statement by the complainant herself in her evidence, it is not possible to accept the prosecution case.

7. The Trial Court, in my view, has correctly appreciated the evidence on record and has acquitted the accused. Appeal is accordingly dismissed.

V.M. KANADE, J.